Appendix A

ENTERED: APRIL 18, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
CIVIL ACTION NO. WC70-53K

DELORES NORWOOD, ET AL.,

Plaintiffs,

—v.—

D. L. HARRISON, SR., ET AL.,

Defendants.

(April 17, 1972)

Before COLEMAN, Circuit Judge, and KEADY and SMITH, District Judges.

OPINION OF THE COURT

COLEMAN, Circuit Judge:

I

The Nature of the Case

This suit, a class action by Negro children attending the public schools, is brought through their parents as next friends.

The defendants are the members of the Mississippi State Textbook Purchasing Board and the Executive Secretary of that Board.

The gravamen of the complaint is that:

"Under the laws of the State of Mississippi, defendants select, purchase, distribute, loan and otherwise

dispose of textbooks, in behalf of the State of Mississippi, for the use of children enrolled in the elementary and secondary schools in the State of Mississippi (Miss. Code Anno. Sections 6634 et seq.) * * *.

"Beginning with the 1964-65 school term * * * when the first school districts in Mississippi were required to integrate under freedom of choice * * * and through the present, numerous private schools and academies have been either formed or enlarged, which schools have established as their objective and/or have had the effect of affording the white children of the State of Mississippi racially segregated elementary and secondary schools as an alternative to racially integrated and otherwise non-discriminatory public schools.

"The defendants have provided these racially segregated schools and academies and the students attending such schools, either through sale or loan, textbooks purchased and owned by the State of Mississippi and have thereby provided state aid and encouragement to racially segregated education and have thereby impeded the establishment of racially integrated public schools in violation of plaintiffs' rights assured and protected by the Fourteenth Amendment to the Constitution of the United States."

Plaintiffs thus assert that defendants' lending of state-owned textbooks to children now attending racially segregated private schools situated within the State of Mississippi is violative of plaintiffs' Fourteenth Amendment rights and constitutes illegal state aid to racially segregated education. Plaintiffs emphasize that they do not challenge the right of students attending private schools, either sectarian or nonsectarian, to receive state-owned

textbooks so long as the schools they attend were not organized in the wake of public school desegregation and do not engage in racially discriminatory admission practices, but as to students attending schools of the latter category, their claim is that the state may not validly provide them with free textbooks.

Plaintiffs pray an order requiring an accounting by defendants of all textbooks purchased from the State of Mississippi or on loan from the State of Mississippi to private schools and students enrolled therein; that defendants be directed immediately to recall, and otherwise assure the return to state depositories, of all textbooks used by students in attendance at private schools which have already been adjudged by other United States Courts as racially segregated and which have been formed for the purpose of providing white students with an alternative to racially integrated, non-discriminatory public schools; that the defendants be enjoined from further sale or distribution of such textbooks to any private schools or students enrolled therein without first notifying plaintiffs and obtaining court approval; and that defendants be enjoined from distributing state-owned textbooks to any private schools or students enrolled therein without first establishing that the school is racially integrated and has not had the effect of frustrating or impeding the establishment of racially integrated public schools.

Subject matter jurisdiction, not contested, is predicated upon 42 U.S.C., §1983 and 28 U.S.C., §1343(3) and (4).

II

Three-Judge Court Jurisdiction

Subsequent to the original filing of the complaint, plaintiffs submitted the following motion:

"Plaintiffs, pursuant to Jackson v. Choate, 404 F.2d 910 (5th Cir., 1968), respectfully move this Court to certify this cause to the Chief Judge of the United States Court of Appeals for the Fifth Circuit to convene a Three-Judge District Court pursuant to 28 U.S.C., §§2281, 2284.

"We further move that the Three-Judge District Court thereafter determine whether this action should be litigated before it or a single district court judge."

In response thereto, the managing District Judge concluded that the complaint called for the convening of a Three-Judge District Court in accordance with 28 U.S.C., §2284, and requested the Chief Judge of the Circuit to constitute a Court as contemplated by the statute. Thereafter, the Court was constituted.

The present views of the plaintiffs to the contrary notwithstanding, the Court is of the opinion that, sitting as a Three-Judge District Court, it has jurisdiction of this controversy.

Title 28, U.S.C., §2281, provides:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the constitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under §2284."

To authorize the convention of a Three-Judge Court the controversy must possess the following characteristics:

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(1) the constitutional question raised must be substantial; (2) a state statute or administrative order of general statewide application must be assailed as unconstitutional; (3) a state officer must be party defendant; and (4) injunctive relief must be sought. Idlewild Bon Voyage Liquor Corporation v. Epstein, 1962, 370 U.S. 713, 82 S.Ct. 1294, 8 L.Ed.2d 794; Hall v. Garson, 5 Cir., 1970, 430 F.2d 430, 442-443; Moore's Federal Practice, 1 A., §0.205; C. A. Wright, Law of Federal Courts, §50 at 189 (2nd Ed. 1970).

This case meets these tests.

An injunction is sought against the enforcement by state officials of a state statute, §§6634, et seq., Mississippi Code, 1942,[1] and Board regulations.[2] The contention is

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[1] Section 6641(1)(a) Mississippi Code of 1942:

"The board shall have the power and is hereby authorized: (a) To promulgate rules and regulations for the purchase, care, use, disposal, distribution, and accounting for all books to be furnished under the terms of this Act and to promulgate such other rules as may be necessary to the proper administration of this Act."

Section 6656 Mississippi Code of 1942:

"Plan. This Act is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.

"The books herein provided by the board shall be distributed and loaned free of cost to the children of the free public schools of the state, and all other schools located in the state, which maintain educational standards equivalent to the standards established by the state department of education for the state schools."

[2] The regulation for distribution of state-owned textbooks from 1940 through 1970 provided as follows:

"For the distribution of free textbooks the local control will be placed in the hands of the County Superintendent of Education. All requisitions for books shall be made through him and all shipments of books shall be invoiced through him. At

that although the statute requires the free lending of textbooks to *all educable children*, it should not include those attending private racially segregated schools. Plaintiffs say that they do not object to other educable children receiving the books. Thus it is argued that they are not claiming the statute to be altogether unconstitutional but they are only challenging the constitutionality of its application. Since, however, the statute specifically provides that *all* children shall receive the books and this Court has no authority to amend that language, we must consider the complaint as an attack on the statute as written. Our jurisdiction, of course, extends to a consideration of whether a facially valid statute has been unconstitutionally applied by officers in charge of its enforcement.

As to substantiality, see Ex Parte Poresky, 1933, 290 U.S. 30, 32; 54 S.Ct. 3, 4; 78 L.Ed. 152, 153; Local Union

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his discretion he may set up certain regulations governing the distribution of books within the county, such regulations not to conflict with the regulations adopted by the State Textbook Board or provisions of the Free Textbook Act."

The above regulation was revised on October 14, 1970, to read as follows:

"*Public Schools.* The administration of the textbook program in the public schools shall be the responsibility of the administrative heads of the county units, consolidated districts, and municipal separate districts set up by the Legislature. All textbook transactions between the public schools and the State shall be carried on through them. It shall be the duty of these local custodians to render all reports required by the State; to place orders for textbooks for the pupils in their schools; . . .

"*Private Schools.* Private and parochial school programs shall be the responsibility of the State Textbook Board. All textbook transactions will be carried out between the Board and the administrative heads of these schools. Their duties shall be the same as outlined above for public schools."

No. 300, Amalgamated Meat Cutters & Butchers Workmen of North America, AFL-CIO v. McCulloch, 5 Cir., 1970, 428 F.2d 396, 399-400.

Contrary to the position taken by defendants, we hold that these plaintiffs, black children who are attending the public schools, have standing to prosecute this complaint, Chance v. Mississippi Textbook Rating Board, 1941, 190 Miss. 453, 200 So. 706; Association of Data Processing Service Organizations, Inc. v. Camp, 1970, 397 U.S. 150; Barlow v. Collins, 1970, 397 U.S. 159.

III

The Merits

Near the close of the Great Depression, Governor Paul B. Johnson, Sr. on January 16, 1940, delivered his Inaugural Address to a joint session of the Mississippi Legislature.[3] He said that 75,000 children in Mississippi were without textbooks, that all states surrounding Mississippi gave free textbooks to each child in those states, that the failure to provide free textbooks to the children of Mississippi was "an indictment of our state government", and that the State should furnish free textbooks to all educable children in the elementary grades.

The result of this appeal was the enactment of Chapter 202 of the General Laws of the State of Mississippi of 1940, approved February 16, 1940, now codified as indicated supra, by which a textbook purchasing board was established. The board was cloaked with authority to select, purchase, distribute, and care for *free textbooks* in *all* schools in the State, through the first eight grades.

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[3] Mississippi House Journal, 1940, page 42.

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In his message to the Legislature on January 7, 1942,[4] Governor Johnson recommended that the free textbook program be extended to high school students. This resulted in the enactment of Chapter 152 of the General Laws of Mississippi of 1942, approved March 23, 1942, also codified as above, by which the program was extended to include high school students.

The program had not long been in existence, however, before a state court suit was filed to enjoin the Textbook Purchasing Board from distributing free textbooks to private and sectarian schools. This was a taxpayers' suit, complaining that textbooks were about to be requisitioned by and loaned to pupils in thirteen private elementary schools, all of which were sectarian, and that the issuance of such books for the free use of students in sectarian schools would be a violation of §208 of the Mississippi Constitution of 1890.

Section 208 provides that:

> "No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school."

In a 5-1 decision, the Supreme Court of Mississippi upheld the legality and the constitutionality [under §208] of providing free textbooks to students in private, sectarian institutions.

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[4] Mississippi House Journal, 1942, page 52.

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In an opinion written by the late [and we may justifiably say, great] Justice Julian P. Alexander, Sr., the Mississippi Supreme Court spoke the following:

> "Although the act allows the loaning of such books to pupils in properly qualified private elementary schools, whether sectarian or not, the sectarian character of some of the schools whose pupils would be loaned school books is vigorously stressed in complainant's brief and argument, and some alarm is confessed by counsel lest this legislation be viewed otherwise than as a threat to the mutual independence of church and state.
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> "The bases for such anxiety are founded upon considerations which bulked large in the minds and hearts of those who founded our republic, and who, in order to insure domestic tranquility and secure the blessings of liberty, established its Constitution with its restrictions, and the flag, which it follows, with its freedom.
>
> "Freedom of conscience was one of the blessings of liberty sought to be secured by constitutional separation of church and state. These principles are historical and fundamental. Yet it is quite true that while liberty is to be maintained at the price of eternal vigilance, such vigilance should include within its scope the common welfare of those who have the right to view educational opportunity as one of the 'blessings of liberty'.
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> * * * * *
>
> "There is no requirement that the church should be a liability to those of its citizenship who are at the same time citizens of the state, and entitled to privileges and benefits as such. Nor is there any require-

ment that the state should be godless or should ignore the privileges and benefits of the church. Indeed, the state has made historical acknowledgment and daily legislative admission of a mutual dependence one upon the other.

"It is the control of one over the other that our Constitution forbids. Sections 18, 208. The recognition by each of the isolation and influence of the other remains as one of the duties and liberties, respectively, of the individual citizen. It is not amiss to observe that by too many of our citizens the political separation of church and state is misconstrued as indicating an incompatibility between their respective manifestations, religion and politics. The state has a duty to respect the independent sovereignty of the church as such; it has also the duty to exercise vigilance to discharge its obligation to those who, although subject to its control, are also objects of its bounty and care, and who, regardless of any other affiliation are primarily wards of the state. The constitutional barrier which protects each against invasion by the other must not be so high that the state in discharging its obligation parens patriae, cannot surmount distinctions which, viewing the citizens as a component unit of the state, become irrelevant.

"The religion to which children of school age adhere is not subject to control by the state; but the children themselves are subject to its control. If the pupil may fulfill its duty to the state by attending a parochial school it is difficult to see why the state may not fulfill its duty to the pupil by encouraging it 'by all suitable means'. The state is under duty to ignore the child's creed, but not its need. It cannot control

what one child may think, but it can and must do all it can to teach the child how to think. The state which allows the pupil to subscribe to any religious creed should not, because of his exercise of this right, proscribe him from benefits common to all.

"If the safety of the republic is to remain the supreme law, the safety and welfare of the citizens who compose it must remain supreme. In obedience to this duty the state may and should supply the child with protection against physical disease and danger, and under our Constitution must encourage the promotion of intellectual and moral improvement. Such benefits once made available by the state, may be demanded by the citizen or by any group of citizens.

* * * * *

"Calm reason must not be stampeded by random cries of church or state or sectarian control, or by the din from the conflict of catechism and dogmatism. A wholesome sanity must keep us immune to the disabling ptomaine of prejudice. If throughout the statute there are words which arrest the attention of oversensitized suspicion and are seen by a jaundiced eye as symptoms of secular control, one may regain composure by viewing the state's book depository as a great public libary of books available to all, which sells any books to anybody, and which, subject to reasonable regulation, allows the free use thereof to any child in any school. Cf. ch. 289, Laws 1938.

* * * * *

"We are of the opinion that the appropriation in chapter 18 of the Laws of 1940 was not a use or diversion of school or other educational funds as

contemplated by section 208, Mississippi Constitution of 1890, nor did it become a part thereof. The appropriation for schools is entirely separate, ch. 17, Acts of 1940. The use of the textbook fund constitutes no charge against any public school funds, properly so called, nor against any trust funds available for particular schools or educational purposes. Such funds are not appropriated 'toward the support of any sectarian school', nor does the furnishing of such books to the pupils in properly qualified private schools constitute a pledging or loaning of the credit of the state 'in aid of any person, association, or corporation' in contravention of section 258 thereof. The books belong to, and are controlled by, the state; they are merely loaned to the individual pupil therein designated; their preservation is fostered by exaction of suitable compensation for their loss or damage; the duty of protection through fumigation against contagion by use is assumed by the state.

* * * * *

"Nor is the loaning of such books under such circumstances to the individual pupils a direct or indirect aid to the respective schools which they attend, although school attendence is compulsory. Such pupil is free to attend a proper public or private school, sectarian or otherwise."

The judgment of the Chancery Court of Hinds County, Mississippi, denying the injunction, was affirmed. Chance v. Mississippi Textbook Rating Board, 1941, 190 Miss. 453, 200 So. 706.

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This 1941 decision of the Supreme Court of Mississippi seems generally to be in accord with one delivered twenty-seven years later by the Supreme Court of the United States in Board of Education of Central School District No. 1 v. Allen, 1968, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060.

In that case a New York statute requiring school districts to purchase and loan textbooks to students enrolled in parochial as well as in public and private schools was under constitutional attack. The Supreme Court held that the New York statute did not constitute a "law respecting an establishment of religion or prohibiting the free exercise thereof" in conflict with the First and Fourteenth Amendments to the Constitution of the United States. We quote from the opinion in *Allen*, supra:

> "Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), is the case decided by this Court that is most nearly in point for today's problem. New Jersey reimbursed parents for expenses incurred in busing their children to parochial schools. The Court stated that the Establishment Clause bars a State from passing 'laws which aid one religion, aid all religions, or prefer one religion over another', and bars, too, any 'tax in any amount, large or small • • • levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion'. 330 U.S., at 15-16, 67 S.Ct., at 411. Nevertheless, said the Court, the Establishment Clause does not prevent a State from extending the benefits of state law to all citizens without regard for their religious affiliation and does not prohibit 'New Jersey from spending tax-

raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools'. The statute was held to be valid even though one of its results was that 'children are helped to church schools' and 'some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets'. 330 U.S., at 17, 67 S.Ct., at 512. As with public provision of police and fire protection, sewage facilities, and streets and sidewalks, payment of bus fares was of some value to the religious school, but was nevertheless not such support of a religious institution as to be a prohibited establishment of religion within the meaning of the First Amendment.

* * * * *

"The express purpose of §701 was stated by the New York Legislature to be furtherance of the educational opportunities available to the young. Appellants have shown us nothing about the necessary effects of the statute that is contrary to its stated purpose. *The law merely makes available to all children the benefits of a general program to lend school books free of charge. Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus no funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools.* Perhaps free books make it more likely that some children choose to attend a sectarian school, but that was true of the state-paid bus fares in *Everson* and does not alone demonstrate an unconstitutional degree of support for a religious institution." [Emphasis ours].

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To be specific, the racial identity of the child had nothing to do with a the original enactment of the Mississippi statute nor has it had anything to do with the receipt of a free textbook throughout a period of more than thirty years. Every Mississippi school pupil, before and since 1954, the date of *Brown* v. *Board of Education*, whether enrolled in public, private, or parochial schools, of whatever race, has received the free textbooks without question or impediment.

Plaintiffs say, however, that furnishing the textbooks free to those students who now choose to attend racially segregated private schools, established in Mississippi since 1964 for the purpose of affording a child an opportunity of not attending integrated public schools, is unconstitutional because it conflicts with the "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch", Green v. County School Board of New Kent County, 1968, 391 U.S., at 437.

In line with this position plaintiffs say (Brief, p. 25) "We challenge this statute to the extent that it requires or authorizes the distribution of state-owned textbooks to schools formed for the purpose of having the effect of providing whites with an alternative to public integrated education."

The evidence establishes that 34,000 students are presently receiving state-owned textbooks while attending 107 all-white, nonsectarian private schools which have been formed throughout the state since the inception of public school desegregation.[5] This number is to be compared

[5] An additional 8,000 students are enrolled in 41 private, nonsectarian schools which do not participate in the state textbook program.

with 534,500 students in more than 1,000 public schools and 12,100 students in desegregated parochial schools who are receiving free textbooks. It is plain, however, that the books have not been issued to the schools but to the students. As in the case of public schools, private and sectarian school authorities are held responsible for the books as a matter of orderly administration. The statute does not authorize the distribution of the books to schools, only to pupils.

We are thus brought to the point of determining whether the state's furnishing of free textbooks to students attending racially segregated schools is a support of such schools, for whose promotion and encouragement public funds, of course, may not be constitutionally provided. In terms of the unequivocal prohibition contained in the First Amendment, made applicable to the states by the Fourteenth Amendment, the question has been clearly settled. Free textbooks to the students is not a financial benefit to the church-related schools, as held in *Allen*, and is not a direct or an indirect aid to such schools, as held in *Chance*. In the recent case of Lemon v. Kurtzman, 403 U.S. 603, 29 L.Ed.2d 745, the United States Supreme Court continued to recognize the distinction between permissible state aid to the student and impermissible state aid to the church-related school, and invalidated a Pennsylvania statute which undertook to provide financial aid directly to church-related schools.

The essential inquiry, therefore, is whether we should apply a more stringent standard for determining what constitutes state aid to a school in the context of the Fourteenth Amendment's ban against denial of the equal protection of the law than the Supreme Court has applied in First Amendment cases. On the record made before us

we perceive neither the logic nor the necessity for applying any different test to a universally free school textbook program.

Plaintiffs rely primarily upon Coffey v. State Educational Finance Commission, 296 F. Supp. 1389 (S.D., Miss., 1969); Poindexter v. Louisiana Financial Assistance Commission, 275 F. Supp. 833 (E.D., La., 1967); Griffin v. State Board of Education, 296 F. Supp. 1178 (E.D., Va., 1969); and Green v. Kennedy, 309 F. Supp. 1127 (D.C., 1970), appeals dismissed for want of jurisdiction, *sub nom.* Cannon v. Green, 398 U.S. 956 (1970), and Coit v. Green, 400 U.S. 986 (1971); continued as Green v. Connally, 330 F. Supp. 1150 (D.C., 1971); affirmed *sub nom.* Coit v. Green, —— U.S. ——, 92 S.Ct. 564 (1971). These cases, which are clearly distinguishable on their faces, are not in point on the present issue.

In *Coffey* it was held that state tuition grants to students attending private segregated schools, first begun in 1964, and which in three years time was followed by an increase in private nonsectarian schools from three to forty eight in number, were "critical to most of the schools", 296 F. Supp. at 1392. The Court further found "that the tuition grants have fostered the creation of private segregated schools • • • encourages, facilitates, and supports the establishment of a system of private schools operated on a racially segregated basis as an alternative available to white students seeking to avoid desegregated schools • • • and that grants 'tend in a determinative degree to perpetuate segregation' ". Therefore, the grants, and the Mississippi statute which authorized them, were struck down as violative of the equal protection clause of the Fourteenth Amendment.

The Court further pointed out:

> "There is no claim in this case that the Constitution requires all children to attend public schools, or that a private citizen may not select a private segregated school for his child because of a desire to keep the child from being educated with children of a different race. What is involved here are legislative enactments which 'will significantly encourage and involve the State in private discriminations'. Reitman v. Mulkey, 387 U.S. 369, 381, 87 S.Ct. 1627, 1634, 18 L.Ed.2d 830, 838 (1967)."

Similar tuition grant cases from other states are collated in Footnote 1 to *Coffey*, 296 F. Supp., at 1390, and will not be cited here.

Similarly in *Poindexter* a statute providing for tuition grants to pupils attending private segregated schools was invalidated. The Court held that any *affirmative* and *purposeful* state aid promoting private discrimination violates the equal protection clause, a state cannot legitimately be just a little bit discriminatory, and that the object or purpose of legislation is to be determined by its natural and reasonable effect. In speaking for the Court, Judge Wisdom wrote:

> "* * * any aid to segregated schools that is the product of the State's purposeful policy of fostering segregated schools and has the effect of encouraging discrimination is significant state involvement in private discrimination. (We distinguish therefore, state aid from tax benefits, free school-books, and other products of the State's traditional policy of benevolence toward charitable and educational institutions)." 275 F. Supp. 854.

The United States Supreme Court affirmed, 389 U.S. 571, 88 S.Ct. 693, 19 L.Ed.2d 780 (1968).

The result of this decision was that Louisiana enacted a revised tuition grant law. This statute, too, was invalidated by a subsequent Three-Judge Court. Poindexter v. Louisiana Financial Assistance Commission, 296 F. Supp. 686. Judge Wisdom again wrote:

> "The free lunches and textbooks Louisiana provides all childen in public and private schools are the fruits of a benevolent racially neutral policy."

Again the United States Supreme Court affirmed, 393 U.S. 17 (1968).

In *Griffin*, a three-judge district court invalidated Virginia's statute allowing tuition grants to children attending segregated schools. Expressly adopting Judge Wisdom's reasoning in *Poindexter*, the Court held the statute impermissibly provided for payments to children who may expend such funds for a segregated classroom, thereby "giving life to an educational forum decried by the Federal Constitution." 296 F. Supp. at 1181.

The tuition grant cases, which emphasize the financial support thereby afforded to educational instituitons, rest upon wholly different considerations from the case sub judice. Here we are concerned only with the act of furnishing a state-owned textbook to the student.

Finally the *Green* case, upon which plaintiffs place great reliance, involved the grant of federal tax exempt status and deductibility of contributions to *private segregated schools* in Mississippi. The *Green* Court emphasized that, apart from tax exemption to the schools, the deductions from income taxes by individuals and corporations who make contributions to racially segregated private schools

amounted to substantial and significant governmental support for the segregated private school pattern. Thus the exemptions were held invalid as against federal public policy without reaching constitutional issues.

We find no federal decision which has suggested the invalidation of the beneficient policy of a state to furnish textbooks to all of the educable children within its borders. To the contrary, under settled case law, the state's legitimate interest in the education of its youth, in whatever school the student or his parents may select, is a proper and adequate basis upon which the state may administer its free textbook program.

It has already been demonstrated that in Mississippi the free textbook program began without racial motivation and the books have long been uniformly supplied to all children alike, regardless of race, in both public and private schools. Only one prerequisite must be satisfied for the student who attends a private school, i.e., the school shall maintain educational standards equivalent to those established by the State Department of Education for public schools. In fact, plaintiffs concede that Mississippi has historically maintained a benevolent and racially neutral policy in the administration of its state-owned textbook program.

We find it wholly illogical to require an alteration in the state's textbook program simply because of the advent of more private schools following the desegregation of the public school system. Depriving any segment of school children of state-owned textbooks at this point in time is not necessary for the establishment or maintenance of state-wide unitary schools. Indeed, the public schools which plaintiffs acknowledge were fully established as unitary schools throughout the state no later than 1970-71, continue

to attract 90% of the state's educable children. There is no showing that any child enrolled in private school, if deprived of free textbooks, would withdraw from private school and subsequently enroll in the public schools, now unitary. We are mindful of the fact that children are free to attend private schools of their choice, for whatever reason satisfactory to them and to their parents. See the concurring opinion of Mr. Justice Brennan in Abington School District v. Schempp, 374 U.S., at 242 (1963).

There could be considerable doubt about the constitutionality, under the equal protection clause, of a program which would provide free books to some children while denying them to others. Providing schools to some children and denying others access to those schools solely for racial reasons was held invalid in Brown v. Board of Education, *supra*.

Plaintiffs say that furnishing the free textbooks to pupils in private schools encourages attendance at such institutions. This, of course, is conjectural, as there is no substantial proof on that score. It occurs to us, however, that if encouragement alone is a sufficient test and if impermissible encouragement necessarily follows from the issuance of the books and subsequent attendance at a particular school, then the books may not be issued to those attending private sectarian schools (something which the Supreme Court has thus for declined to invalidate).

Since the issuance of free textbooks to students attending private schools has failed to defeat the establishment of a state-wide unitary school system in Mississippi, and since plaintiffs are themselves receiving their free textbooks, there is serious question as to whether plaintiffs are threatened with the irreparable injury which is prerequisite to injunctive relief. Federal judicial power is to

be exercised to strike down legislation, whether state or federal, only if a plaintiff is himself immediately harmed, or immediately threatened with harm, by the challenged action, Poe v. Ullman, 1961, 367 U.S. 497, 504.

Lurking beneath all this is the principle that two wrongs do not make a right. Punitive action against the children now receiving free textbooks in the private schools will do nothing to cure acts committed by others (not children) in the years now dead and gone.

We hold that the free textbook program and the Mississippi statutes authorizing it, for the consideration herein recited, are not constitutionally invalid.

This opinion constitutes both our findings of fact and conclusions of law.

The complaint is dismissed and judgment will be entered accordingly.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ William C. Keady
United States District Judge

/s/ Orma R. Smith
United States District Judge

Appendix A

ENTERED: April 18, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

CIVIL ACTION NO. WC70-53K

DELORES NORWOOD, ET AL.,

Plaintiffs,

—VS.—

D. L. HARRISON, SR., ET AL.,

Defendants.

JUDGMENT

This cause having been submitted upon the pleadings and oral and documentary proof, and after arguments of counsel and submission of memorandum briefs, and the court having concluded for the reasons set forth in its opinion this date released that the complaint is without merit and should be dismissed; it is

ORDERED

(1) All relief sought by plaintiffs be, and the same is hereby denied.

(2) The complaint is finally dismissed with prejudice.

All costs are taxed to plaintiffs.

This 17th day of April, 1972.

/s/ WILLIAM C. KEADY
United States District Judge

FOR THE THREE JUDGE COURT

Appendix A

ENTERED: May 16, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

CIVIL ACTION No. WC70-53K

DELORES NORWOOD, ET AL.,

Plaintiffs,

—v.—

D. L. HARRISON, SR., ET AL.,

Defendants.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that plaintiffs Delores Norwood, Andrew Galloway and Van Siggers, pursuant to 28 U.S.C. §1253, enter an appeal to the Supreme Court of the United States from the judgment and opinion of this three-judge district court dated April 17, 1972 and entered April 18, 1972.

Appendix A

Dated: May 15, 1972.

MELVYN R. LEVENTHAL
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Attorneys for Plaintiffs

Appendix A

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 1972, I caused to be served by United States mail, postage prepaid, a copy of the foregoing Notice of Appeal upon Honorable William A. Allain, Assistant Attorney General, P. O. Box 220, Jackson, Mississippi 39205.

/s/ REUBEN V. ANDERSON
Attorney for Plaintiffs

Appendix B

ARTICLE 32

TEXTBOOKS

§ 6634. Mississippi state textbook purchasing board established.—There is hereby established the Mississippi State Textbook Purchasing Board, which shall hereinafter be referred to in this act as the board. Said board shall consist of five members, the governor who shall be ex-officio chairman, the state superintendent of education, and three members to be appointed by the governor, one from each of the three supreme court districts, who shall serve for a period of four years. In case of a vacancy during the administration for which they are appointed, the governor shall appoint a member or members to fill only the unexpired term. Each appointed member of the board shall be an educator of known character and acknowledged ability in his or her profession, with at least five years of successful teaching or supervisors experience in the public schools of Mississippi immediately previous to his or her appointment, and in addition thereto, shall be a qualified elector of his or her supreme court district. He or she shall be at least thirty years old.

The board, at its first meeting, shall elect an executive secretary who has proven business ability, whose duty it shall be to keep the minutes of the board, a complete record of all the proceedings of the board, and shall keep, file and preserve all documents, papers and records of the board, and shall perform such other duties as may be prescribed by the board. Said executive secretary shall enter into bond in the sum of $10,000.00 payable to the state of Mississippi, conditioned upon the faithful performance of his duties, and the proper and accurate ac-

Appendix A

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 1972, I caused to be served by United States mail, postage prepaid, a copy of the foregoing Notice of Appeal upon Honorable William A. Allain, Assistant Attorney General, P. O. Box 220, Jackson, Mississippi 39205.

/s/ REUBEN V. ANDERSON
Attorney for Plaintiffs

Appendix B

ARTICLE 32

TEXTBOOKS

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counting for all funds of every nature that may come into his hands or under his control under the provisions of this act.

Three members shall constitute a quorum for the transaction of all business.

SOURCES: Laws, 1940, ch. 202; 1942, ch. 152; 1946, ch. 444, § 1.

§ 6635. Oath of office.—Each appointive member of the board and its executive secretary, before entering upon the discharge of his or her duties shall take, subscribe, and file with the secretary of state the following oath to be administered by an officer authorized to administer oaths:

"I, ..., do solemnly swear, (or affirm) that I will faithfully discharge my duties as required by law, uninfluenced by any factor except a sincere desire to promote the best educational interest of Mississippi. So help me God."

SOURCES: Laws, 1940, ch. 202.

§ 6636. Members of board not to be personally or pecuniarily interested.—No person who has acted as an agent for any author or textbook publishing house, or an attorney for any author or textbook publishing house, or who has been an author or associate author of any textbook published by any textbook publishing house, or who owns stock in any textbook depository or any publishing house, or who has been directly or indirectly concerned in the authorship of any textbook, or directly or indirectly connected in any way with any textbook publishing house, shall be eligible to appointment on the Mississippi state

textbook rating and purchasing board. Any contract entered into in violation of this section shall be void.

SOURCES: Laws, 1940, ch. 202.

§ 6637. Publishers not to approach or make offers to members of board.—It shall be unlawful for any publisher, author, person, firm, company or corporation who deals in books, or any of their representatives, to offer, either directly or indirectly, any kind of employment of any pecuniary connection to any member or members of said board during their tenure of appointment.

SOURCES: Laws, 1940, ch. 202.

§ 6638. When members of board shall be disqualified to vote.—If any person related within the third degree by blood or marriage, as computed by civil law, to any member of the board, or if any person that is associated in any business or partnership with any member of said board, shall be employed in good faith by any school book company, firm, corporation or agent in connection with the adoption of textbooks within this state, the said member of said board so related by blood or marriage, or so associated in business or partnership with such person, shall not vote in the rating and adoption of any school book or books offered by such school book company, firm, corporation or agent for adoption.

SOURCES: Laws, 1940, ch. 202.

§ 6639. Compensation of the appointive members of the board and secretary to the board.—The governor and state superintendent of education shall serve without extra compensation. Each appointive member of the board shall receive ten dollars per day for each day in active service of

the board, not to exceed sixty days per year, and, in addition thereto, ten cents (10c) per mile one way for each mile actually traveled, by the shortest traveled route, from home to the place of meeting.

The salary of the executive secretary shall be set by the board and all necessary traveling expense shall be approved by the board. The annual salary and travel expense, however, shall not exceed that allowed by the legislature for the director of a division in the state department of education, and shall be subject to all other provisions governing the same. The salary, per diem, and travel expense shall be paid out of the state textbook fund provided herein. The board shall have authority to provide necessary help, clerical assistance and supplies for the executive secretary, to be paid out of the state textbook fund, within the limits prescribed in this act.

SOURCES: Laws, 1940, ch. 202; 1948, ch. 304, § 1; 1950, ch. 373, eff July 1, 1950.

§ 6640. Meeting—time and place.—The board shall meet at such time and place as shall be designated by the chairman or by a majority of said board.

SOURCES: Laws, 1940, ch. 202.

§ 6641. Powers and duties of board.

1. The board shall have the power and is hereby authorized:

(a) To promulgate rules and regulations for the purchase, care, use, disposal, distribution, and accounting for all books to be furnished under the terms of this Act and to promulgate such other rules as may be necessary for the proper administration of this Act.

Appendix B

(b) To adopt, contract for, and purchase, cash or credit, basal textbooks through twelve grades as provided in the school curriculum, or any other course or courses that they may add thereto.

(c) To determine the period of contract for rated and adopted textbooks shall not be for less than four years and not exceeding five years, with the right of the board in its discretion to renew or extend such contract from year to year for a period not exceeding two additional years, the conditions of the approval or forfeiture of a contract and other terms and conditions as may be necessary and not contrary to law. No contract shall be valid and binding until and unless approved by the Governor.

(d) For the purpose of assisting the board during an adoption, there shall be rating committees in each of the fields in which textbooks are considered for adoption, and each committee shall be composed of seven members; the State Superintendent of Education shall appoint three (3) members of each of the committees, each of whom shall be a competent, experienced teacher or supervisor of instruction professionally trained in each of the fields in which textbooks are considered for adoption; the Governor of the State of Mississippi thereupon shall appoint four (4) members of each of said committees who shall be persons he deems competent to participate in the appraisal of books offered for adoption, in each field, for use in the public schools of this state. It shall be the duty of said rating committees to appraise the books offered for adoption in each field in which textbooks are offered for adoption and recommend three books for each adoption to be made by the board and giving the reasons for or basis of such recommendations. No book shall be recommended which does

not receive a majority vote of the members of each committee; any member or members dissenting from any majority vote of the committee shall make his or their appraisal of any book recommended or rejected by the majority of the committee and specify the reasons therefor and make such recommendations as he or they think proper. All appraisals, recommendations, and dissents if any, shall be in writing and filed with the board for its consideration upon the adoption. The expenses of such committees shall be paid out of the State textbook fund provided herein. Such rating committees shall be subject to the regulations set forth in Sections 2, 3, 4, 5 and 6. The board shall have the power to reject any and all recommendations of the rating committees and to call for further recommendations; but in no case shall the board adopt any book not recommended by the rating committees.

(e) The board shall have complete power and authority over additions and amendments to textbooks, advertising and their contents, bids and proposals, prices of textbooks, specimen copies, cash deposits, selection and adoption, distribution, fumigation, emergencies, selling to others, return of deposits, forfeiture of deposits, regulations governing the deposit, forfeiture of contract, approval of contract, renovation and repair of books requisition, transportation or shipment of books, and any other Acts or regulations, not contrary to law, that may be deemed necessary for furnishing and loaning free textbooks to the school children, as provided in this Act. The board shall have full power to advertise for bids, to purchase, buy, and contract for all such basal textbooks through twelve grades as provided in this Act, and all contracts shall be approved by the Governor.

(f) It shall be the duty of the board to advertise for sealed bids, said bids to be opened at a meeting of the board at a date named in the advertisement. Bidders shall quote their lowest net wholesale prices, and net exchange prices, f.o.b. central depository, Jackson, Mississippi, or the board may, in its discretion, establish a state depository or depositories, or inaugurate any other plan for the distribution of books, and such prices must not be higher than the lowest price at which books are sold anywhere in the United States, after all discounts are allowed; and at any time that the board may find that any book or books, in either regular or special editions, are being furnished in any other state at a lower price under contract than it is being furnished in Mississippi, the contract shall be forfeited to the State, and any contractor who violates the provisions of this Section shall return all money paid out for such book or books and also forfeit said book or books to the State, and suit may be brought on the bond of the contractor for all losses sustained.

Successful bidders or contractors shall be required to maintain a depository at a place within the State of Mississippi, to be named by the board, where a stock of books sufficient to meet all reasonable and immediate demands shall be kept. Upon requisition of the board, the depository shall ship books, transportation charges paid, to the various shipping points in Mississippi to be specified by the board, and for such service the depository shall make no charge to the board except the actual cost of transportation from the depository to the shipping point designated; provided that the cost of distribution shall not exceed eight percent of the total appropriation for any fiscal year.

2. Any and all textbooks that may be furnished by the publisher thereof to any member of the above mentioned

rating committee without cost shall within one year after receipt of same by said member be turned in to the State School Book Depository without any cost to the State of Mississippi, and the same shall thereafter be used without any cost to the State of Mississippi in supplying free textbooks to the educable children of the State of Mississippi as now provided by law.

SOURCES: Laws, 1960, ch. 310.

§ 6642. Copies of bids, contracts, specimen books retained as public records.—Specimen copies of all textbooks, which have been made the basis of contracts under the provisions of this act, clearly marked and identified as such, shall be deposited by the publisher of said books with the state superintendent of education, said specimen copies shall be preserved and kept open for inspection by the public. All contracts and bonds executed under the provisions of this act shall be executed in triplicate, one copy for the contractor, one copy to be filed in the office of the secretary of state, and one copy to be filed in the office of the state superintendent of education. All contracts shall be approved by the governor. An original of each bid, whether accepted or rejected, shall be filed and preserved in the office of the state superintendent of education for at least five years. All books furnished the state of Mississippi by contractors under this act shall continue to measure up to the same standards as are required in the contract, said standards to include printing, binding, cover boards, mechanical makeup, and any other relevant points as set out in the plans and specifications as fixed by the board. Any contractor of any book or books, who fails to keep said books up to said standards, shall forfeit, not only his con-

tract to the state, but shall return all money paid out for such book or books and also forfeit said books to the state.

SOURCES: Laws, 1940, ch. 202.

§ 6643. Others may buy books.—Any parent, person or school board in any community of the state may purchase books from the county superintendent of education or depository, who is given authority to sell books under the provisions of this act; provided, that the price of the books so ordered or bought shall be paid in advance, said price to be the same as the contract price, plus whatever postage or delivery charges might accrue.

The county superintendent of education or depository shall keep a detailed record of all such sales and shall forward in quarterly payments all such funds received for books to the executive secretary to be placed to the credit of the state textbook fund. Said executive secretary shall furnish the county superintendent or depository with a receipt for the money received, and said county superintendent or depository shall keep such receipt as part of his public record.

SOURCES: Laws, 1940, ch. 202.

§ 6644. Anti-trust provision.—No book or books shall be purchased from any person, firm or corporation who is a member of, or connected with, any trust. In the event that it is established that this provision has been violated, the contract shall be forfeited and monies paid out under this contract shall be returned to the state, and all books heretofore purchased under said contract shall be kept by the state.

SOURCES: Laws, 1940, ch. 202.

Appendix B

§ 6646. Uniform textbooks—selection by local school authorities.

1. The State Textbook Board shall adopt and furnish textbooks only for use in those courses set up in the State course of study adopted by the State Board of Education, or courses established by special acts of the Legislature. In all subjects the board, in its discretion, may adopt five (5) textbooks from those recommended by professional committees, according to the State Textbook Law. The prices of books adopted shall not be higher than the lowest prices at which the same books are being sold anywhere in the United States. The State Textbook Board may adopt a plan which permits the local districts to choose the book or books to be requisitioned from those adopted, provided:

(a) That in selecting readers, the local district may be allowed to adopt two (2) from which each pupil enrolled may be furnished the equivalent of two (2) in such proportions as desired;

(b) That in selecting books for all other subjects, the local school districts may be allowed to select any adopted State textbook without being restricted to a single declared adoption when the governing authority of the district declares a policy of multiple adoptions and specifies the subject areas therefor, and further provided, that not more than one (1) of the books from the multiple adoption list shall be furnished to each pupil enrolled in a course;

(c) That when a book is furnished by the State, it shall remain in use during the period of its adoption;

(d) That school officials of separate school districts and of each system of county schools shall select the same book or books for all of its schools;

(e) That the average per pupil cost of textbooks so furnished any unit shall not exceed that allowed for all other units in the State; and

(f) That nothing herein provided shall be construed as giving any school the authority to discard or replace usable copies of textbooks now being furnished by the State.

2. Whenever any book under contract is displaced by a new adoption, the board may continue to require the schools to use such books until the stock owned by the State is exhausted, provided the period of use shall not exceed four (4) years.

SOURCES: Laws, 1966, ch. 421, § 1, eff from and after passage (approved May 31, 1966).

§ 6647. Agents designated.—Any person, firm or corporation with whom a contract has been entered into, under the provisions of this act, shall designate the secretary of state of Mississippi as its or their agent, upon whom citation and all other writs and processes may be served, in case any suit shall be brought against such person, firm or corporation.

SOURCES: Laws, 1940, ch. 202.

§ 6648. Textbook fund.—The state textbook fund of Mississippi shall consist of the amount or amounts appropriated by the legislature for same, together with all monies accruing from the sale of disused books, all monies derived from the purchase of books by both public and private school trustees, by private individuals, all monies collected in damage suits under the terms of this act, or any other monies collected in any way whatsoever under the terms of this act.

SOURCES: Laws, 1940, ch. 202.

§ 6649. Warrants.—Bills for textbooks purchased by the state on requisitions as provided herein, and bills for all other expenses incurred under the terms of this act, shall be paid by warrants on the state treasury made by the auditor on receipt of bills from the executive secretary, and approved by the board.

SOURCES: Laws, 1940, ch. 202.

§ 6650. Printed labels—book covers.—All books shall have printed labels on both inside covers. Each school shall number all books, placing the number on said labels. All teachers shall keep an accurate record of the number and names of all books issued to each pupil. All books must be covered by the pupils, under direction of the teacher, said covers to be furnished by the board.

SOURCES: Laws, 1940, ch. 202.

§ 6651. Penalty for school officers dealing in textbooks.—No teacher in any of the schools of the State, nor county or city superintendent of schools, nor any person officially connected with the government of or direction of any school shall, during the term of his office as said superintendent, or during the time of his or her employment as teacher, act as agent or attorney for any textbook publishing company selling textbooks in this state. If, after election as county or city superintendent, or employment as teacher, any person filling such position accepts the agency or attorneyship of any textbook publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or position as teacher held at the time of the acceptance of such agency or attorneyship.

SOURCES: Laws, 1940, ch. 202.

§ 6652. Executive secretary to deposit funds.—The executive secretary shall deposit all funds sent to him for lost or damaged books or any other funds accruing under this act to the state treasury to the credit of the state textbook fund.

SOURCES: Laws, 1940, ch. 202.

§ 6653. Suits.—Any loss occásioned by the neglect, carelessness, or failure of duty by the county superintendent or any principal or teacher in charge of any school, shall entitle the state to bring suit for the recovery of the amount of the loss or losses occasioned thereby.

Any writ or suit of any nature instituted under the provisions of this act shall be brought in the name of the state of Mississippi by the attorney general, and any money or moneys recovered by such suit shall be placed to the credit of the state textbook fund.

SOURCES: Laws, 1940, ch. 202.

§ 6654. Penalty for the violation of the provisions of this act.—Any person wilfully violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not more than five hundred dollars ($500.00), or not to exceed six months in the county jail, or both, in the discretion of the court.

SOURCES: Laws, 1940, ch. 202.

§ 6655. Constitutionality.—Should the courts declare any section or sections, sentence, clause, or any part of this act unconstitutional, such decision shall apply only to the section or sections, sentence, clause or part so declared

to be unconstitutional, and shall not apply to any other section or sections or any other part of this act.

SOURCES: Laws, 1940, ch. 202.

§ 6656. Plan.—This act is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.

The books herein provided by the board shall be distributed and loaned free of cost to the children of the free public schools of the state, and all other schools located in the state, which maintain educational standards equivalent to the standards established by the state department of education for the state schools.

Teachers shall permit all pupils in all grades of any public school to carry to their homes, for home study, the free text books loaned to them, and to carry to their homse, for home study, all other regular text books used in the public schools of the state whether they be free text books or not.

SOURCES: Laws, 1940, ch. 202; 1942, ch. 152; 1944, ch. 149, § 1.

§ 6657. Repeal.—All laws and parts of laws in conflict herewith shall be and are hereby repealed.

SOURCES: Laws, 1940, ch. 202.

§ 6658. When free textbooks to be furnished.—The free textbooks to be purchased and distributed for use in the high schools in the state as provided in this act shall be furnished to the pupils during each school session from and after July 1, 1942, but nothing contained in this act

shall be construed as requiring the board to furnish free textbooks for use in the ninth to twelfth grades, inclusive, during the 1941-42 school session.

SOURCES: Laws, 1940, ch. 202; 1942, ch. 152.

§ 6658-01. Storage of school books.—1. It shall be the duty of the board of supervisors of each county in the state to provide adequate storage space in the county courthouse, or in some other building at the county site, for the storage of school books, distributed under the provisions of chapter 202, laws of Mississippi, 1940, as amended by chapter 152, general laws of 1942 [§§ 6634—6658, Code of 1942]. In the event sufficient space for the storage of such books cannot be provided in the courthouse, the board of supervisors shall be authorized to rent a room or rooms in some other building at the county site for the storage of such books, and to pay such reasonable rental therefor as may be necessary out of the general fund of the county.

2. The county superintendent of education, with the approval of the county school board, may expend out of the county school fund an amount not to exceed one hundred and fifty dollars ($150.00) in any school year for part-time janitor's services or other help in the handling, storage, and distribution of school books.

SOURCES: Laws, 1946, ch. 464, §§ 1, 2.

§ 6658-02. Reports required from non-public schools receiving free textbooks.—1. The management of all private, parochial or denominational schools wherein the state textbook board is furnishing to the students thereof free school textbooks and said free school textbooks are used by the students in said school, shall file annually with

the county superintendent of education wherein said school is located on or before July 1 of each year a report showing the number of students receiving instruction, the number of students in regular attendance, the number of teachers employed and any other facts required by the state board of education as will show the grade, character and amount of educational work actually done in said school.

2. Any person required by this act to do so who shall refuse, neglect or fail to file the report herein required shall be guilty of a misdemeanor and upon conviction, shall be fined in a sum not to exceed twenty five dollars ($25.00).

3. All laws or parts of laws in conflict herewith be and the same are hereby repealed.

SOURCES: Laws, 1946, ch. 464, §§ 1, 2.

§ 6659. Advertising.—The Mississippi State Textbook Purchasing Board is hereby authorized, empowered, and directed, in its discretion, to offer for advertising purposes, the protective covers of the several free textbooks, to accept bids, to let contracts for said space; and the contracts for said advertising purposes shall be let for definite periods not to exceed two years.

It shall be the duty of the Mississippi State Textbook Purchasing Board, if it is desired that advertising shall be used, to approve all proposed advertising submitted for use on the covers of such free textbooks, to accept only that advertising which will be in keeping with the spirit of the schools in promoting the children physically, mentally, and morally; and the said Mississippi State Textbook Purchasing Board is hereby authorized, empowered,

and directed, in its discretion, to reject any and all bids submitted. Provided that no sectarian, un-American or immoral advertisements shall be accepted.

That all moneys derived from sale of such advertising be deposited in the state treasury for the benefit of the general fund.

SOURCES: Laws, 1940, ch. 194.

§ 6659.5. Mississippi Blue Book, purchase and distribution of.—1. The State Textbook Purchasing Board be and it is hereby authorized and empowered to purchase not to exceed seven thousand five hundred copies of the Mississippi Blue Book for supplementary use in the schools of Mississippi.

2. The Mississippi State Textbook Purchasing Board shall prescribe the number of copies to be furnished each school or make any other regulations governing its distribution and use.

3. The cost of the Blue Books purchased and distributed in excess of the number of copies now authorized by law shall be paid for out of the regular appropriation to the state textbook fund.

SOURCES: Laws, 1950, ch. 362, §§ 1-3.

Appendix C

(See Opposite) ☞

APPENDIX C[1/]

STATEWIDE ENROLLMENTS

	Private Non-Sectarian				Public	
	Total Enrollment	Change	# of Schools	Number of Schools Opened For First Time		Change
63-64	2,362		17		570,000	
64-65	2,408	+ 46	21	4	576,000	+6,000
65-66	3,841	+1,433	41	20	583,000	+7,000
66-67	5,452	+1,611	49	8	582,500	- 500
67-68	6,546	+1,094	58	9	582,500	---
68-69	9,064	+2,518	69	11	581,500	-1,000
69-70	30,939	+21,875	124	55	550,500	-31,000
ct. 1970	42,000[2/]	+11,061	155	31	534,500	-16,000

[1/] This Appendix derives entirely from exhibit offered and received into evidence by supplemental order of district court.

[2/] Estimate based on stipulations; the exact figure lies somewhere between 41,000 and 43,000.

Appendix D

(See Opposite) ☞

PRIVATE NON-SECTARIAN ACADEMIES PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1] 1970-71

NAME OF SCHOOL[3]	NUMBER OF BOOKS	COST TO STATE	NUMBER OF STUDENTS[2]
1. Presbyterian Day School	264	$ 576.45	135
2. Chamberlain-Hunt Academy	829	3,398.82	360
3. Clarksdale Baptist	2356	5,937.45	427
4. First United Methodist	1305	3,029.25	169
5. Presbyterian Day School	1247	2,323.11	141
6. St. George's Episcopal	1340	2,885.54	169
7. Christ Episcopal Day School	2075	5,218.28	265
8. Woodland Hills Baptist Academy	2279	5,598.42	428
9. Heidelberg Baptist Academy	1993	5,557.50	295
10. Jesus Name Faith	85	170.70	44
11. St. John's Day School	1130	2,465.85	184
12. First Baptist Parochial	630	1,499.64	78
13. Sylvarena Baptist Academy	1671	4,255.77	236
14. Gospel Lighthouse Christian	119	472.95	22
15. Adams County Private	2513	8,327.34	1006
16. Adams County Christian	3452	8,918.07	535
17. Amite School Corporation	3950	11,875.26	581
18. Pine Hills Academy	1839	5,194.44	328
19. Gray Academy	1320	3,932.43	177
20. Shaw Educational Foundation	1480	4,443.00	905

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[1] This Appendix derives entirely from compilation filed by appellees in the district court

[2] All students (and all faculty members) are white except for "15 Chinese, 16 oriental, 2 Indians and 2 Latin American" students.

[3] The district court found that all of the "church schools" recorded herein are essentially non-sectarian and were formed in response to the desegregation of public schools.

PRIVATE NON-SECTARIAN ACADEMIES
PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1]
1970-71

NAME OF SCHOOL[3]	NUMBER OF BOOKS	COST TO STATE	NUMBER OF STUDENTS[2]
21. Calhoun Academy	294	$ 655.14	127
22. Carroll Academy	358	1,084.83	305
23. Chickasaw Academy	1420	3,586.17	164
24. Clarke Academy	387	1,478.04	340
25. Oak Hill Academy	2348	6,739.17	450
26. Pheba Academy	675	1,636.14	133
27. Happy Day School	652	884.73	110
28. Copiah Academy	2472	7,312.20	483
29. The Children's Academy	726	2,588.70	148
30. Union Private	1578	4,526.16	202
31. Sanford Academy	787	2,277.54	136
32. Covington School Foundation	512	1,494.36	75
33. J. A. Beeson Academy	1531	4,229.04	265
34. Kirk Academy	842	3,061.74	639
35. Grenada Lake Academy	2523	7,119.58	381
36. Westminister Academy	252	773.86	132
37. Bearss Academy	417	1,146.18	117
38. Jackson Academy	3071	6,652.56	575
39. Southwest Academy	1167	2,649.12	131
40. Terry Academy	1378	3,884.61	157
41. Central Holmes	3861	12,787.11	501
42. Cruger-Tchula Academy	2299	7,712.64	438
43. East Holmes Academy	2776	7,791.60	619
44. Four County Academy	815	1,905.90	76
45. Humphreys Academy	3480	10,000.71	398
46. Live Oak Academy	218	822.21	412

APPENDIX B

PRIVATE NON-SECTARIAN ACADEMIES
PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1]

NAME OF SCHOOL[3]	NUMBER OF BOOKS	COST TO STATE	NUMBER OF STUDENTS[2]
47. Claiborne Educational Foundation	2032	$ 4,792.38	253
48. Prentiss Christian School	779	1,975.95	180
49. Kemper Academy	3849	10,654.85	432
50. College Hill Academy	513	1,701.51	199
51. Lawrence County Academy	717	2,149.32	177
52. Leake Academy	2369	6,809.19	500
53. M & L Academy	844	2,013.18	42
54. Greenwood Private Junior High	1160	4,288.95	330
55. Pillow Academy	2453	7,802.87	1189
56. Brookhaven Academy	2675	6,457.74	307
57. Southwest Christian Academy	564	1,689.09	361
58. East Lowndes Academy	1745	5,056.02	247
59. Heritage Academy	1593	4,029.81	350
60. Canton Academy	8437	25,506.60	1225
61. Madison-Ridgeland Academy	448	1,151.01	136
62. Tri-County Academy	1217	4,327.71	438
63. Columbia Academy	1514	4,914.35	379
64. West Marion Academy	2073	6,336.78	383
65. Marshall Academy	1153	3,012.36	600
66. Mt. Pleasant Christian Academy	1254	3,498.30	149
67. North Mississippi Academy	442	1,230.96	95
68. Montgomery-Carroll Academy	699	1,629.49	174
69. Pioneer Academy	438	922.65	45
70. Newton County Academy	887	2,046.92	78
71. Central Academy	1858	5,329.29	751
72. Starkville Academy	3229	9,562.77	553
73. North Delta Schools, Inc.	1021	3,373.19	268

APPENDIX D

PRIVATE NON-SECTARIAN ACADEMIES
PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1]
1970-71

NAME OF SCHOOL[3]	NUMBER OF BOOKS	COST TO STATE	NUMBER OF STUDENTS[2]
74. West Panola School	1143	$ 3,134.67	203
75. Parklane Academy	1539	3,887.01	228
76. Quitman County Education Foundation	727	3,008.91	480
77. Brandon Academy	3912	11,447.46	589
78. East Rankin Academy	1341	3,149.16	180
79. Flowood Academy	443	1,251.93	227
80. Rankin Academy	1510	5,302.47	284
81. Scott County Christian	2235	6,325.58	320
82. Sharkey-Issaquena Academy	1051	3,815.35	664
83. Simpson Academy	1266	3,427.89	270
84. Pines Academy	156	404.82	44
85. Central Delta Academy	1933	4,878.66	216
86. Indianola Academy	7985	24,029.01	1209
87. North Sunflower Academy	2243	7,841.28	626
88. Paynes Academy	1288	3,635.73	96
89. West Tallahatchie Academy	666	1,856.85	178
90. Hillcrest Academy	547	1,495.26	165
91. Magnolia Heights	1930	5,674.80	228
92. Northwest Academy	1613	4,347.15	239
93. Tunica Institute	2189	6,851.52	495
94. Citizen's School	1776	4,589.91	255
95. Walnut Hills School	317	816.42	114
96. Deer Creek School	1821	5,126.76	496
97. Wayne County School Foundation	814	2,064.21	103
98. Centreville Academy	3750	10,295.55	407
99. Winston Academy	1781	5,036.76	288

PRIVATE NON-SECTARIAN ACADEMIES
PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1]
1970-71

NAME OF SCHOOL[3]	NUMBER OF BOOKS	COST TO STATE	NUMBER OF STUDENTS[2]
100. Benton Academy	3148	$ 8,432.85	421
101. Bentonia Academy	874	1,951.35	82
102. Manchester Academy	1004	2,356.92	550
103. Highway Baptist School	1304	2,839.83	104
104. Jefferson Davis Academy	1054	3,701.10	356
105. North Central Miss. Schools	723	1,602.87	67
106. Wilkinson County Christian	4002	11,359.74	404
107. Pearl River Academy	660	1,209.06	104
TOTALS:	173,424	$490,239	34,532